

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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AUSTIN AITKEN,	:	CASE NO. 1:04CV1748
	:	
Pro Se Plaintiff	:	
	:	
-vs-	:	<u>MEMORANDUM OF OPINION AND</u>
	:	<u>ORDER ACCEPTING THE REPORT</u>
	:	<u>AND RECOMMENDATION OF</u>
CUYAHOGA COUNTY COMMON	:	<u>MAGISTRATE JUDGE McHARGH AND</u>
PLEAS PRE-RELEASE DEPT.,	:	<u>DENYING THE PRO SE PLAINTIFF'S</u>
	:	<u>PETITION FOR A WRIT OF HABEAS</u>
Defendant	:	<u>CORPUS (NUNC PRO TUNC,</u>
-----	:	<u>TYPOGRAPHICAL)</u>

UNITED STATES DISTRICT JUDGE LESLEY WELLS

This case is before the Court on Pro Se Plaintiff Austin Aitken's petition for a writ of habeas corpus. (Docket No. 1). This matter was referred, pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1, to Magistrate Judge Kenneth S. McHargh for a Report and Recommendation ("R&R"). (Docket No. 6). On 20 July 2005, Magistrate Judge McHargh issued an R&R recommending that Mr. Aitken's petition be denied because it was not filed within the statutory time limits. (Docket No. 16). Mr. Aitken filed a timely objection to Magistrate Judge McHargh's R&R. (Docket No. 16).

Under Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C), this Court reviews *de novo* the portion of the Magistrate Judge's report and recommendation to which specific objection was made. Upon review, this Court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Although Mr. Aitken filed a timely objection to Magistrate Judge

McHargh's R&R, the single-page of text and attached transcript excerpt has no relation to this issue of the untimeliness of Mr. Aitken's petition. (Docket No. 16). Rather, Mr. Aitken's submission highlights that Mr. Aitken was apparently informed in state court that he "could be kept under supervision for up to three years" – not four years. (Id.). This fact goes to the merits of Mr. Aitken's claims – merits we cannot reach due to the undisputed untimeliness of Mr. Aitken's petition.

CONCLUSION

For the reasons set forth above, Magistrate Judge McHargh's R&R is **adopted**. Mr. Aitken's petition for writ of habeas corpus (Docket No. 1) is **denied**. IT IS SO ORDERED.

/s/Lesley Wells
UNITED STATES DISTRICT JUDGE

Dated: 21 October 2005